

## REMARKS

### I. Objection to Specification

With respect to the objection to the specification and the objection under § 112, reconsideration is requested. The argument is made that the language “substantially continuous contact with one or more windings for a complete turn of a particular winding” in claim 65 or 66 or “contact with another winding for a complete turn of a given winding” in claim 32 does not have support in the specification.

Figure 1 shows a top circumferential view of an annular element and Figure 10 shows a cross-section of that annular element. There is no change in the cross-section of the annular element along its circumference. *See* Figure 1. That is, the windings, looked at from above, do not change in any way all the way around their circumference. They are shown to be circular all the way around the circumference, as shown in Figure 1.

Since there is no change in shape of the annular element along its circumference in the cross-section direction, there can be no change in the cross-section at any point, such as the point shown in Figure 10. As a result, windings must be maintained in substantial contact, shown in the cross-section of Figure 10 all the way around the circumference of the annular element.

The figures show that the outside shape of the circumference (as well as the shape of each loop or winding) is unchanging. Moreover, the fact that the windings are formed by wrapping them around a mandrel (specification at page, lines 10-12) leaves no other reasonable conclusion but that the windings are in substantially continuous contact all the way around the circumference of the annular element.

Therefore the objection to the specification should be reconsidered.

### II. § 112, First Paragraph Rejections

In order to satisfy the written description requirement, the disclosure as originally filed does not have to provide *in haec verba* support for the claimed subject matter at issue. *See Fujikawa v. Wattanasin*, 93 F.3d 1559, 1570, 39 U.S.P.Q. 2d 1895, 1904 (Fed. Cir. 1996). Nonetheless, the disclosure must convey with reasonable clarity to one skilled in the art that the inventor is in possession of the invention. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-4, 19 U.S.P.Q. 2d 1111, 1116-1117 (Fed. Cir. 1991). One skilled in the art, reading the original

disclosure, must reasonably discern the limitation at issue in the claims. *Waldemar Link GmbH and Co. v. Osteonics Corp.*, 32 F.3d 556, 558, 31 U.S.P.Q. 2d 1855, 1857 (Fed. Cir. 1994).

§ 112, First Paragraph Rejection of Claims 65-73, 75-79 and 81-82

With respect to the planes both being parallel and substantially coplanar, a plurality of spring windings can be parallel, of course. They cannot be perfectly coplanar, but if the spring is small enough (*i.e.*, annular), they can be “substantially” coplanar. Only “substantial” coplanarity is claimed. Therefore reconsideration is requested since the plane does not require precise coplanarity but substantial conplanarity.

Claims 66-74 do not include the “substantially coplanar” language.

§ 112, First Paragraph Rejection of Claims 65, 67-73 and 81-82

The assertion that “flattened helical coil” lacks support is belied, for example, by Figure 1, showing a flattened helical coil, and Figure 10, showing a cross-section of a flattened helical coil. The illustrated coil is flattened at least in the direction of the length of the axis of symmetry where all the wraps of the coil are bunched together in a tight annular ring, as depicted. Therefore reconsideration is requested.

The objection to a helical coil of closed loops is not understood since clearly each of the loops closes back upon itself. Therefore reconsideration is requested.

Claims 67-69 do not include the flattened helical coil language.

§ 112, First Paragraph Rejection of Claims 65, 67-73 and 81-82

The objection to the claim language “the loop wraps back upon itself” and “turns back upon itself”, or “each of the loops wrapping back upon itself”, or “wire turned back upon itself” is clearly shown in the figures. Each of the loops must come back upon itself. The loops cannot be opened up since they clearly form a tight circular shape. Reconsideration is requested.

**III. § 112, Second Paragraph Rejection**

A claim must set out and circumscribe a particular area with a reasonable degree of precision and particularity when read in light of the disclosure as it would be by the artisan. *In re Moore*, 439 F.2d 1232, 1235, 169 U.S.P.Q. 236, 238 (CCPA 1971). Acceptability of the claim

language depends on whether one of ordinary skill in the art would understand what is claimed in light of the specification. *Seattle Box Co. v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 826, 221 U.S.P.Q. 568, 574 (Fed. Cir. 1984).

#### § 112, Second Paragraph Rejection of Claims 65 and 75-79

Reconsideration is requested of the § 112 rejection of claims 65 and 75-79 since no claim requires parallel and precise coplanarity but instead the claims only call for “substantial” coplanarity.

#### **IV. Double Patenting (Provisional)**

Since the double-patenting rejection is only provisional, the applicant cannot respond at this time. Until the applicant knows what the claims are as allowed in the copending case, it is impossible to decide what action to take. Therefore further action on the double-patenting objection should be deferred until one of the cases is allowed.

#### **V. Prior Art Rejection of Claims 81 and 82**

At least each of the following elements of claims 81 and 82 distinguishes over the cited Dwyer reference:

##### 1. “Windings overlapping along radii of said annular resilient element”.

It is suggested that “radially overlapping” refers to the wire, not to the windings. *See* Office Action, page 5. The claim has been amended to preclude this position.

There cannot possibly be radially overlapping windings, as amended, in the reference because, as clearly shown in Figure 36, the windings are all parallel and do not radially overlap. Therefore the windings do not overlap in a radial direction of the annular element.

##### 2. The annular element is “adapted to be folded”.

There is simply no way that what is shown in Figure 36 as element 144 is “adapted to be folded”. No one could fold the structure shown there and it is clearly not adapted for that function.

##### 3. “Loops are substantially coplanar with each of said other loops.”

With respect to the loops making up the alleged element 144, the diameter of the wire is so great that no one skilled in the art would suggest that those loops are “substantially coplanar”.

4. "Loops having a common central axis, said element having a central axis parallel to the length of the graft".

Apparently it is contended that the annular element is separate from the windings. However, the annular element is the same as the windings. The claim 81 calls for "said annular element comprising...windings".

It is never explained how it is that the loops making up the element 144 could have a central axis parallel to the length of the graft. To the contrary, anyone skilled in the art would see that the axis of each of the elements 144 is transverse to the length of the graft 12 shown in Figure 1.

In view of numerous issues with the rejection, the rejection should be withdrawn.

In view of these remarks, reconsideration is respectfully requested.

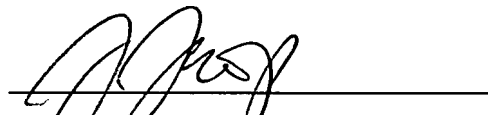
**Copending Applications**

A list of the copending applications is provided below. The examiner is requested to refer to the image file wrapper for the 10/832,159, 11/205,826, and 11/496,126 applications to view the claims.

1. Serial No. 10/832,159, filed April 26, 2004, which is a divisional of 09/365,860, filed August 3, 1999 (now issued), which is a continuation of this application.
2. Serial No. 11/205,826, filed August 17, 2005, which is a continuation of application 10/124,944, filed April 18, 2002 (now issued), which is a divisional of this application.
3. Serial No. 11/496,162, filed July 31, 2006, which is a continuation of application 10/118,409, filed April 8, 2002 (now issued), which is a continuation of this application.

Respectfully submitted,

Date: 11/20/2007



Timothy N. Trop, Reg. No. 28,994  
TROP, PRUNER and HU, P.C.  
1616 S. Voss Road, Suite 750  
Houston, TX 77057  
Phone: 713-468-8880  
Fax: 713-468-8883